

# A METAPHOR: MUSIC AND LAW

## UMA METÁFORA: MÚSICA E DIREITO

MÔNICA SETTE LOPES\*

### ABSTRACT

It is possible to use music to explain the ways law follows as an element of human culture in a metaphorical approach that leads to the understanding of que path of legal hermeneutic.

**KEYWORDS:** Law and music. Epistemology. Legal Hermeneutic.

### RESUMO

É possível usar a música para explicar as formas como o direito segue como um elemento da cultura humana em uma abordagem metafórica que leva à compreensão do caminho da hermenêutica legal.

**PALAVRAS-CHAVE:** direito e música. Epistemologia. Hermenêutica Legal.

It is common sense to say that *metaphor* implies the use of analogical approach in order to emphasize the essential aspects of a determinate life beam and of human knowledge. That is what happens when the main objective is to compare the interpretation process in music and law. The paths may alter through historicity or simply take coincidental aspects of both great spheres built of human culture. But there are always two main questions at the bottom:

*What is law?*

*What is music?*

A plain music concept applicable, predominantly, to the occidental world could be the following, according to *Martin*:

“a determinate species of organized sound patterns, created deliberately to produce certain effects”<sup>1</sup>.

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\* Professor at the Federal University of Minas Gerais School of Law. Doctor in Philosophy of Law. Judge of the Labor Court of Appeal in Belo Horizonte.  
E-mail: msl@ufmg.br

1 MARTIN, 1999, p. 14.

Such concept runs over incongruities, recognized by the author<sup>2</sup>, as the impossibility of a universal and uniform presupposition. There are communities in Africa, which do not have an abstract idea of what *music* is, hence they experience and perform it<sup>3</sup>.

It is also possible to question what criteria for an effective *sound organization* would be.

The research could go on indefinitely and there is a good chance of never achieving a perfect conclusion or defining the relevant outlines of the phenomena all together.

The same difficulty appears when one seeks to establish a universal or widely accepted concept of what law is<sup>4</sup>. There would not be, however, an acute incongruity on beginning by the same key-notions expressed by *Martin*. Perhaps law could be defined as

normative patterns of organized behaviors, created deliberately to produce certain effects.

The distressing point is that the concept does not include elements that constitute sources and provisions of the dynamic performance of music and law, considered either the historical and culture attachment that lead one to another, or the several developments of its interpretation and/or creation processes<sup>5</sup>. It is necessary to face the irruptive flexibility of life and the way everything crosses the world of abstraction and get surrounded by casualties that don't tend to uniformity.

The conflicts are an inevitable reality in the *life-world* and the human culture carries and exposes them in the several ways of production and reproduction of experience. There is no homogeneity; and the web of connections reaches culture and human interest in its most comprehensible conception<sup>5</sup>.

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2 MARTIN, 1999, p. 14.

3 MARTIN, 1999, p. 14-17

4 To have an idea about the conceptual difficulty, see the following authors, as a plain sample, HART, 1961, HART, 2000, KANTOROWICZ, 1962, LEVY-ULLMANN, 1925, SANTIAGO NINO, 1973, VALLET DE GOYTISOLO, 1998, JACQUES, 1964, KALINOWSKI, 1982, KRAWIETZ, 1994.

5 MARTIN, 1999, p. 9-10.

Under a historical point of view, right and wrong in terms of law and music do not constitute absolute concepts. They are the result of the evolution and multiple perspectives in which reality can be perceived. It is not certain that something which sounds out of key today would have sound the same way in the past. On what law is concerned, it would suffice to talk about the environmental protection or the slavery.

Harmony is, then, based not on equality, but on the idea of proportion, for it embodies a criterion of certain flexibility. The musical perception evolves the harmony limits: sound and dissonance improve the hearing of each instance.

Notwithstanding, when the questions that initiate this text are back into consideration, it is necessary to resist the temptation of answering them with the opening of a path.

“What is music? It is. Expression, within-expression of possible worlds, (really possible) [...]”<sup>6</sup>.

So is law. It expresses itself as a solution to possible worlds. Law does not dominate worlds. In its circumstances, it does not reach the core of the conflicts and it does not put out the vibrating sparkle that inflames them.

There is always a restricted space of influence to which the law adheres. In this special field, the effects are sensed and absorbed. However, the controversial aspect for law, the one that makes it impossible to compose a precise concept, is the zones of instability in the rule insertion. Sometimes the expected effects are not known nor accomplished.

Law does not determine the end of difference. The resentment between husband and wife may still exist after the separation in spite of the family law rules and principles. The agonal scene persists along with the complex relationship between capital and labor, between capital and consumers, between capital and environment, for example.

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6 “O que é a música? Ela é. Expressão, entre-expressão de mundos possíveis (realmente possíveis) [...]” – COUTO, 2001, p. 220.

The conflict expands itself through the difference that affects the way the groups express their music and interests<sup>7</sup>. Each particular culture can detect the *wrong* note, even when they do not know the exact *reason* for the mistake<sup>8</sup>.

The mistake, the wrongdoing or the unlawful are somehow attached to the social imaginary. It is sensed or envisioned. Everything, however, derives from interpretation, which is more than mere reproduction, as exposed by *Aarnio*:

“The interpretation is always accompanied by a creative character, generative. The idea is to give sense, not to find it”<sup>9</sup>.

The legislator is a *composer of rules*. The composer is a *legislator* as he seeks for definition to abstract notes with which he prescribes or designs limits to the expression of what he creates. The judge is an interpreter that recomposes the legal system under his personal perspective according to the essential normative elements that are connected to each case. He or she shapes the conflict according to the process’s own timing. The musician also interprets and recomposes the piece, arranging its contents in accordance to a chosen meaning. All of them, each in their peculiar way, interpret and make sense through an explicit formulated result – as sound, as text.

Law is a product of many hands that sculpt it in diversified spaces. Its concrete realization process is the strongest depository of its dynamic multiplicity of argumentative relations.

The interpreter’s universe, in music performance and in case deciding, can be seemingly confined to the *text-piece* and to the parameters set in the rules. It is supposed that they are followed to a certain extent. However, even if it is understood that the musician-interpreter is somehow limited, there is an open field to creativity-discretion, because the normative models do not absorb all its application possibilities.

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7 MENUHIN, DAVIS, 1990, p.29-32.

8 MARTIN, 1999, p.8-13.

9 AARNIO, Aulus. Derecho y lenguaje. In: AARNIO, 2000, p. 16.

The lawmaker naturally defines some of the parameters of the legal rule. Article 944 of the Brazilian Civil Code of 2002, for instance, regulates one of the most sensitive spheres in adjudication, which is the compensation of damages, a tool that affects the whole legal system. It says: “The compensation is measured by the extension of damages”.

An average evaluation of the lawsuits history could be a worthy source to establish the meaning of *compensation* and *damages*, but it is unlikely that a uniform meaning could be obtained, because the concrete hypothesis varies too much.

The fact, which should be measured, is not fully presented in the rule as an identified topic. It involves volatile circumstances and aspects that ask for an axiological option of the interpreter. There is not a *ruler* that contains the exact measurement to calculate the *extension of damage*, as a precise or *concrete* point to be reached.

Laymen have difficulties with the open texture of legislation in which the interpretation implies the value padding of an essential beam to concrete case adjudication. The malleability is led by definitions that are only fulfilled with variable reflection and that has its handling conformed by argumentation. As *Timsit* said, law “is, then, silence”<sup>10</sup>.

The message of an open texture is the need to interpret the silence, the *not said*. Law does not always sound. Most of the times, it just whispers. Law does not give all scale measurement. It introduces a pause: the interpreter defines the extension.

*Gadamer*, referring to *Aristotle*, notices the deficiency of law:

“Law is always deficient, not because it is so in itself, but because facing the order to which law is intended, human reality is always deficient and does not allow a simple application of it”<sup>11</sup>.

The deficiency of law may be summarized in the fragility by which it communicates certainties. Even though this may be

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10 TIMSIT, Gérard. La science juridique, science du texte. In: BOURCIER, MACKAY, 1992, p. 462.

11 GADAMER, 2002, v. 1, p. 474.

the result of its deficiency, the malleability is essential to reach the highest number of situations.

The technical connotation of juridical terms, with the need of fulfilling, may bring discomfort, if not misunderstanding. Along with the traditional sense, words may carry the heavy burden of historical-conceptual composition of strictly legal appearance. In order to situate them, there is a *background* to be revealed, as *Jerome Frank* stated:

“Even around the more precise words, often there is a fringe of ambiguity which can be dissipated only by the consideration of context and background”<sup>12</sup>.

*Frank* points out that it should not be so hard to understand this need for adaptation, because it is found in everyday language, in which the context grants sense. The example presented by him is the expression *drinking a toast*<sup>13</sup>.

The problem is that the usage of law terminology and instruments is not exercised as an everyday practice in a way so that it could be inserted as a commonplace facet of the communication process.

“Thereupon we ask, not what this man meant, but what this words would mean in the mouth of a normal speaker of English, using them in the circumstances in which they were used, and in it is to the end of answering this last question that we let in evidence as to what the circumstances were. But the normal speaker of English is merely a special variety, a literary form so to speak, of our old friend the prudent man”<sup>14</sup>.

The *normal speaker of English* is opposed to *Wendell Holmes’ bad man*. He does not comprehend the language of law as he is supposed to for several reasons.

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12 FRANK, Jerome. Words and music: legislation and judicial interpretation. In: FRANK, 1973, p. 299.

13 FRANK, Jerome. Words and music: legislation and judicial interpretation. In: FRANK, 1973, p. 299.

14 HOLMES, Oliver Wendell. The theory of legal interpretation. In: POSSNER, 1996, p. 297.

Law theory should consider both the *normal speaker* and the *bad man*. They are relevant to the understanding of why law is sometimes not obeyed.

This makes clear that the interpreter's activity – the judge or the *instrumentalist-singer* – is not enough. There is an audience to persuade: an audience where each and every one are interpreters<sup>15</sup>.

In music, the concern about the *audience* began in the nineteenth century. The public should be conquered, persuaded to admire what is offered to them. This is an unrest that may be in the sources of the composer's formulations, but it does not end with the end of his work. In fact, it begins there.

The legislator may be compared to the composer, according to what *Jerome Frank* previously announced:

“It cannot help itself: It must leave interpretation to others, especially to the courts. (...) Those who today complain about any “judicial legislation” in statutory interpretation are complaining about the intrusion of the judges' personalities. However, just as Krenek shows that the effect of the performer's personal reactions cannot be excluded, so legal thinkers, in increasing numbers, have shown that the personal element in statutory construction is unavoidable”<sup>16</sup>.

The legislator registries, in the guideline of the rule he creates, the signs that will be interpreted and will attain the *addressee-public*. The composer goes through the same creation process. The interpreter should (or can) put himself in the composer's place or in the party's place<sup>17</sup>. However, this is just one of the strategies.

Referring to the already quoted *Jerome Frank*, *Pierre-André Côté* states

“The metaphor of musical interpretation has already been used to explain the judicial interpretation. The interpreter of a law may, in fact, be compared to the concert instrumentalist. The artist, when sitting at the piano, for example, is theoretically free to play whatever occurs to him, but the convention wants him to play the pieces announced in a

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15 See PERELMAN, 1978, p. 425.

16 FRANK, Jerome. Words and music: legislation and judicial interpretation. In: FRANK, 1973, p. 300-1.

17 See FRANK, Jerome. Words and music: legislation and judicial interpretation. In: FRANK, 1973, p. 301.

certain order. Music does not transpose the instrument by a perforated roll thanks to which, by a purely mechanical action, he can make sound: there won't be music until he starts to play. In this sense, the musical piece interpretation constitutes a creation that carries, in its root, the interpreter's identity. (...) The artist, as the interpreter of law, goes back to the past, to the ideas that the sheet music expresses. However, he should be concerned with the present: the audience expects not only that the musician respects the program, but that he attends to the aesthetic demand<sup>18</sup>.

The sheet music embodies rationality. That is, however, a certainty that is relativized by the musician.

The legal rule is adjusted in guidelines with variable openings meant for the circuit of life. When a rule establishes that an eighteen-year-old person is capable of all acts of civil life, it composes a model that does not hold broader external interventions and that brings a limited level of assessment. Most of the time, however, it is asked of the interpreter a fulfilling activity that is essential to bring to life the abstract idea stated in a standard.

Creation has an evolving character. That is the reason why *Paulo Ferreira da Cunha* points out the problem of acknowledging whether “the judges know the guidelines or improvise too much”<sup>19</sup>.

Whenever the interpretation of rules is concerned, there is always a space for improvisation. The composer always leaves some space for some creation by the interpreter<sup>20</sup>. The interpreter always sees beyond the limits left by the composer.

Reading and improvising constitute steps in the transposition of the rule's or the music's abstract aspect to the experience of its concrete accomplishment.

The process in its dialectic, may, therefore, be compared to the music figure of the counterpoint that is revealed mainly in the doings of the judge. There is the experience of heterogeneous

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18 CÔTÉ, Pierre-André. L'interprétation de la loi: une création sujette à des contraintes. In: BOURCIER, MACKAY, 1992, p. 152.

19 CUNHA, Paulo Ferreira da. Interpretação jurídica e música: um exemplo interdisciplinar. In: CUNHA, 2004, p. 124. See DWORKIN, 1999, p. 67-75.

20 See FRANK, Jerome. Words and music: legislation and judicial interpretation. In: FRANK, 1973, p. 304-6, CHIASSIONI, Pierluigi. L'interpretazione dei documenti legislativi: nozioni introduttive. In: BESSONE, 1999, p. 23-34 e PAPAUX, 2003.

elements in several levels<sup>21</sup>, which are *played-listened* simultaneously because they integrate the *piece*, even if they may sound separately.

The variation of the lines sounds simultaneously: the rule, the absorption of its content in the various fields of reference (the decisions, the jurisprudence), the various aspects that constitute the controverted fact (*whether* it happened and *where, how, when and why*), the peculiarity of the process and the various valued conjectures around its constituted elements.

Life expression is revealed in the experienced fact. In the judicial process it is initially the proof and, further on, it becomes the conception of the interpreter-judge about its meaning. These sounds echo and come out with some questions: the witness's voice modulation, the manifestation which can be aggressive, compassionate, or chaotic of a lawyer or the need to know the judge's position in order to prevent the strategy<sup>22</sup>.

*Thomas Heck*, in a book organized by *Twining*, on historical and intersubjective inferences, imagines the hearing of testimonies to prove that *Schubert* (1797-1828) would have composed guitar pieces, based on evidences that this instrument would have been more popular in the Vienna of his time than is believed. In order to justify his statements, he analyses many music editions and correlate data. *Thomas Heck's* construction is an interesting and forceful vehicle to the comparison for the judicial evidence mechanisms<sup>23</sup>.

*Jerome Frank* assimilates the fragility of the contemporary means of proof to the precariousness of the Middle Ages when the process was linked to the acts of God, by the ordeals<sup>24</sup>. The technique replaced the mystic characteristic of evidence that had their strength directly covered by the mysteries and magic of the

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21 DELEUZE, GATTARI, 2002, p. 318-22.

22 See FRANK, Jerome. Words and music: legislation and judicial interpretation. In: FRANK, 1973, p. 301.

23 HECK, Thomas. Schubert Lieder and the guitar: musicological evidence and inference. TWINING, HAMPSHER-MONK, 2003, p. 287-310.

24 See FRANK, Jerome. Modern legal magic. In: FRANK, 1973, p. 42-5.

supernatural<sup>25</sup>. But, as he concludes, technique is also presented as something supernatural, more important than all things. Therefore the uncertainty is a risk left aside and that it is not absorbed problematically as a relevant point to law theorization.

There is a moment in which all the information is gathered and the solution is given. It happens in the judicial decision, mainly if reached by the efficacy of the *res judicata*, with its maximal preclusion strength. It *solves* the conflict. But, it does not always make it disappear. It shapes the world and a certain degree of silence. The words in the paper tend to absorb the agony, but do not dissipate it.

*Huizinga* relates the tribe tradition in which the disputes were solved in a drum contest, which included the *invention* of songs in which the rivalries were told and denounced<sup>26</sup>. The solution would come through the exercise of dissension exposure until the litigants were completely worn out.

The modern era sought to inoculate the idea that law would extinguish the disputes. Nevertheless, it only masked the tension inherent to the permeability of the rule adaptation process.

Nevertheless, law can only be comprehended in its various processes perspective. The moment when the decision comes out. The fact that it does not exist by itself apart from the process. It can only be demonstrated by going through various stages: past and present and the control of future effects.

The sensation of *relief* that should result from the decision – the relief that comes from an adequate legal version to the controverted facts – can leave behind dissonant notes. The process is not necessarily resolved there: there is a new aspect open to litigation.

In the tonal system, the chord is resolved in a note that constitutes part of a proportion structure. The fingers, the voice and the ears are prepared in the music circuit for the definite moment

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25 See, in a special way, about the technique development and the progress feeling in the seventeenth to the twentieth centuries , LALOUP, NELIS, 1965 e SPENGLER, 1958.

26 See HUIZINGA, 1971, p. 97-8.

in which the dominant note flow is accommodated and the tension goes away. However, it is a provisional feeling. The comfort of this moment is opened to various frustration tones: the music that achieves the final resolution and depletes the pleasure from the tensional exercise, the note that is prepared to the assembly of a new succession of unresolved sounds. The end is delusive. However, above all this, the registry should happen with the most important factor: in music the path to the dominant note, until resolution, bears more pleasure than the solution itself. It is better to follow the way than to arrive.

The final chord resolves the song. Nostalgia of it and of the process that precedes the end is sent to music universe. It is for the pleasure of listening that there are so many songs.

According to *Wisnik*, this history remains effective. The tonal music brings safety on what concerns the ones that hope to hear it.

The idea of solution is also connected to the Law. It is put together in the conflict compass and its variations.

In apparent paradox, law and music move in a permanent dialogue with the origin and the need of invention to “*make it new*”<sup>27</sup>. They incarnate an uneasy trip, that fully belongs to the hermeneutic process and that cannot be overcome, even if a rigid regime of binding *canons* is sought.

The first lost tradition highlights, in both cases, a coincident aspect: the impossibility of making visible in the lifeless paper all the strength and vigor of life and creation. Autonomy and coherence, as canons of the interpretative process, need constant update by an interpreter who cannot reach the primary scene.

Would there be, then, to law and music a single solution or a single interpretation? The discussion may begin with *Cossio*:

“In this way (...) we are submitted to a dialectic process of comprehension, we see here that in law adjudication there is something that comes and goes through law, something we put in it and extract from the regulated behavior. In other words, we are with the same problem of interpretation of a partition, but its shift extracts itself from

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27 See GEAREY, 2001, p. 124.

the same partition that must be played. This is so true that two people play the same music sheet, surely they perform it in a different way”<sup>28</sup>.

In fact, the reasoning of a *single decision*, as a destination of law adjudication process, constitutes an *idea* or a *dogma*, which carries all the abstraction risk. The unpredictability of the arguments constitutes a strangling point to the absorption of the judicial technique by the *audience*.

The score and the rule interact with the interpreter and through him, as if they were part of his body and senses. This intervention of the hermeneutic process renders the execution of the *dogma* of the *unique decision* and of the *single way of performing a piece* impracticable. The expression of the registries (notes, pauses, articles, paragraphs) is intercepted not only by the particular performer interpretation technique- the way he translates the sign to the instrument (the guitar, the voice, the sentence) -, as well as his *feeling* or *experience* in facing the effects. Once more, Jerome Frank’s approach is correct:

“Some particular interpretation of a Beethoven sonata may become a convention; that interpretation takes the place of whatever Beethoven may have intended. Then this interpretation is itself interpreted. But a new musical interpreter may revolt against the convention, and may go directly to the musical score, trying to rediscover the composer’s original meaning. So with a statute: The judges having interpreted it, that interpretation – the gloss on the statute – is substituted by the words the legislature used and the interpretation becomes the subject of further interpretation. However, a court may someday spurn that interpretation and try to recapture the original legislative meaning (...)”<sup>29</sup>.

Most of the methods of acknowledging and deciphering law do not present it in all ranges. They notice the rule. They perceive the righteous source of comments that decode its essence and define what it means, but they sometimes flee from the inner scene in which occurs the encounter with *real life*.

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28 COSSIO, Carlos. El derecho en el derecho judicial. *In*: COSSIO, 2002, p. 48.

29 FRANK, Jerome. Words and music: legislation and judicial interpretation. *In*: FRANK, 1973, p. 303.

Once in a while, the tension and apparent impossibility of solution, in the musical text, constitute the support of the composition or its identifying shade. The *irrationality* or *sound rebellion* ends up being incorporated to musical logic. *Max Weber* explains the process:

“Sounds harmonically strange to the chord in an chord that, in a way, moved sounds that truly corresponded to its position and, for that reason, could not behave “freely”, as the legit “harmonic” resonance, but they would need to be “prepared”. They do not promote the chord specific resolution, but it is accomplished, at the same time, at first, because the dislocated sounds were further re-inserted in its offended rights by these rebels. (...) There wouldn’t be modern music without these tensions provided from the irrationality of the melody, for they constitute precisely its most important means of expression”<sup>30</sup>.

Law would not improve without the rebels that now and then open the doors of necessity and show them straightforwardly.

There is a poem by *Mário Quintana* (*Meu trecho predileto-My favorite part*) in which he says: “What touches me the most in music are these loose notes – poor single notes – which the piano tuner pull out from the keyboard...”<sup>31</sup>

The loose note, in this case, is related to the poet’s ear and therefore is not alone itself. His sense goes beyond the technical function of the tuner which is to establish its stature from the comparison of other *notes* and *keys*. The interpreter sensitivity emphasizes a connotation that dissipates the seeming *poverty* of its exposure.

In music, the isolated note does not matter. What is important is how it is connected to the chord, to its variations and detours conceived by the composer and how it is connected to the logic of times and its dimension.

Law is revealed in the movement that contents tension and partial solutions. In the end, it is not about pleasure, but necessity. It is useless to know only what the result is. The dialectic of opposites

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30 WEBER, 1995, p. 59-60.

31 QUINTANA, 2005, p. 49.

struggles, “father of all things”<sup>32</sup>, as *Heraclito* once designated, discloses *what* law is. The process, more than the decision, unwraps law *duties*.

The new interpretation for law may or may not be accepted<sup>33</sup>. The law logic introduces the incompatibility and revolt. The uncertainty and unpredictability of law constitute the means of expression of the legal rule in all times.

There is no way to clean it up from tensions and multiple angles that involve the conflicts and established rules to prevent and solve them.

The note, the pauses, the signs that indicate the measurement of timing, of compasses, the timeline released on the partitions, the clef, the principles, the signs focused on the rule are only evaluated with the *interpretation* and may only be understood when the musician is himself *interpreted* by the audience.

There, as well as in law, the central idea is the one that introduces a parameter that will only be accomplished through its flow to reality.

The reciprocity between the text, transcript in the score, and the interpreter is not simply solved. Even if the music vocation is to sound, an intense activity of the performer is essential in order to spread it out as its destiny through space and time.

In music, everything is relative: one note to the other, a pause to the entire circuit of a compass, the sentence to the sense of the complete play. The conductor, the musician and/or singer are active subjects in another bond when they are put in front of an audience. The audience, passive at first, gives a message with their *reinterpretation* strength and creates dialectic of coordination, juxtaposition, dependence in which the core and the accessory are mixed together or take turns.

The rules are also connected to people and to one another. It is as if it were a continuous group play, as focused by *Kaufmann*:

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32 DUMONT, 1988, p. 158, Fragmento LIII.

33 LAGNEAU-DEVILLÉ, Anne. Questions sociologiques à propos de l'interprétation en droit. In: KERCHOVE, 1978, p. 511-2.

“a person is not substance, a person is relation, more accurately: the structural unit de relatio and relate. In this sense it is a person the how and the what, subject and object of the normative speech as a whole, inside and outside the discursive process, the given and the lost, but it is nor static or timeless, in its historical dynamics, neither discretionally available”<sup>34</sup>.

The relation identifies and distinguishes one person from another, an institution from another, a rule from another. In legal terms, the relation enters space and time with a succession of lines that capture specific sources of protection and throws them to different ranges in the world’s interconnections. The various schemes of regulation return to the past, forwards to the future with a predisposition to spread effects.

The same determination of effects is lit in music and may not be just sensed in the eloquent mandate of past and in the waves’ transposition to the future.

The fact from the past must be rebuilt in the present and remains in the future with the singularities that are given to it by the adjudication shaping. The effective rules and a composition of models built in the past are appropriate to its multiple connections to define *right* or *wrong* in a determinate context. The past to law is a continuously visited place.

The synthesis, perhaps, is not even efficient, but when we say that everything in music and law is relative, we imply the reaching of a functional chaining and the effort to distinguish the notions of *autonomy* and *heteronomy*.

Autonomy in music may be understood as dysfunctional, notably from the liberalization of Church rites, for instance<sup>35</sup>, and it is opposed to the idea of heteronomy.

*Arnold Whithall*, in an article in which he studies autonomy and heteronomy in musicology<sup>36</sup>, presents a very symbolic example.

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34 KAUFMANN, 1999, p. 68. About post-modernity and law, See yet, MARTÍNEZ-CARRASCO PIGNATELLI, 2002, NIETO, GORDILLO, 2003, SANTOS, 2002.

35 MARTIN, 1999, p. 16. See MERLEAU-PONTY, 2004, p. 62-6.

36 WHITTHALL, Arnold. Autonomy/heteronomy: the contexts of musicology. In: COOK, EVERIST, 2001, p. 73-101.

He comments on a piece from *Elliot Carter*, called *Scrivo in vento* (1991) in which a part of *Petrarca's* (1326-1352) poem is used to express the beauty of a life paradox: the conscience of death. The artist-poet wants to create something that lasts forever or that goes beyond the evidence of the end. *Whitthall* mentions that *Carter* tries to close open spaces in the poem of *Petrarca* and does so by using an external factor from his own life: he hears, from his apartment, the sounds that come from the gap between the *World Trade Center's* towers. The poem of *Petrarca* and the sound of *Carter* are survivors<sup>37</sup>: the vanishing of their points of creative inspiration set them free from their connecting source. They keep in memory the heteronomy register, but they may sound free and autonomously from their matrixes.

The difference between autonomy and heteronomy, in what law is concerned, may be seen through several angles, even if the etymological root is kept. The first of them is about the external effects of rule and sanction that belong to it. The incidence of the agent's *will* or *acceptance* is unnecessary<sup>38</sup>. It would be possible to say that, even if it is external to the subject, when the spontaneous acceptance is given, it is internalized and the autonomy, in a certain degree, is reached and reproduced in the expected behavior. However, this is a way of seeing the issue that cannot be situated in the space of the estimations for the effectiveness of law.

The project at this point, however, is to adopt a perspective which is based on the separation between the rule and pressure factors inserted in them, and, by doing so, to reach the same conclusion as *Whitthall*. According to him, even if the use of the idea of closing spaces between the *World Trade Center* Twin Towers may be attractive in days of much wind in order to explain the essential character of the piece, this explanation may increase the segregation between the music and the world and, as well, it may subject it to its powerful and irresistible embrace<sup>39</sup>.

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37 WHITTHALL, In: COOK, EVERIST, 2001, p. 99.

38 See KELSEN, 1983.

39 WHITTHALL, In: COOK, EVERIST, 2001, p. 99.

The technical data that may be used to aggravate the segregation between law and real world of life ends up being subject to its powerful embrace. The technique is also subjected to the incandescent cuddle of life. Law comes from life and to life it shall return.

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